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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,482	04/04/2001	John C. Carson	A17-045	6243
7590 02/02/2004				
COLEMAN SUDOL SAPONE, P.C.				
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BRIDGEPORT, CT 06605-1601				
		EXAMINER		
		VENKAT, JYOTHSNA A		
		ART UNIT		PAPER NUMBER
		1615		

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/826,482

Applicant(s)

CARSON ET AL.

Examiner

JYOTHSNA A VENKAT

Art Unit

1615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 02 January 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): New matter rejection.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.


The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 2,3,5-10,12,14,15,17,20-27,29 and 30.Claim(s) rejected: 1,11,13,16,18,19 and 28.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


JYOTHSNA A VENKAT
Primary Examiner
Art Unit: 1615

Continuation of 5. does NOT place the application in condition for allowance because: the claims 1,11, 13, 16, 18-19 and 28 are anticipated by the patent '469. Applicant's arguments are not persuasive. The claim 1 has two embodiments where in the first composition has either high density aromatic ester emollient or conditioning agent. Examples II-III anticipates the claims for the embodiment, where in the first layer has conditioning agent. The patent at col.11, lines 25 et seq discloses emollients and at lines 45-49 defines these emollients as providing conditioning properties. Therefore emollients are also conditioning agents. The patent at col.12, lines 25-30 discloses the preferred emollients. Applicants argue that sodium isostearoyl lactylate or lauryl pidolate are not high density aromatic esters. In response to this, the examiners position is that these compounds reads on the embodiment "conditioning agents". In response to the argument that the patent is silent to mention of different phases, applicants did not present any evidence that the examples II-III did not have two phases upon settling. Note that the "phase" is defined in the specification at page 8 as "a distinct layer which appears in composition after a settling period, preferably at least about 1 minute more often about 5 minutes or more about 30 minutes and in certain embodiment upto several days are more. Applicants did not present any evidence that the examples II-III satisfy all the criteria with respect to phases. The claims are drawn to compositions and the 102 rejection is deemed proper.